IN THE

Supreme Court of the United States

OCTOBER TERM, 1970.

No. 759

UNITED STATES OF AMERICA,
Appellant,

vs.

ARMOUR & CO. AND GREYHOUND CORPORATION,
Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION.

BRIEF FOR GREYHOUND CORPORATION.

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INDEX.

TABLE OF CASES CITED.

Texts, Rules and Statutes.

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QUESTIONS PRESENTED.

Greyhound does not agree that "The Questions Presented" are those stated in the Government's brief. It believes that the questions actually presented by the Government's appeal are:

1. Did the District Court err in dismissing the Government's petition to make Greyhound a party to the 1920 Packers' Consent Decree and to grant relief against it, when the petition and supporting affidavit did not allege any facts showing that Greyhound was aiding and abetting a violation of the Decree by Armour, or preventing Armour from complying with the Decree?

2. Does the fact that Armour is a subsidiary of Greyhound, which also owns subsidiaries that deal in food products allegedly forbidden to Armour, make Armour a dealer in such products, or an owner of an interest in the Greyhound subsidiaries, within the meaning of the 1920 Decree?

3. Does the 1920 Packers' Consent Decree enjoin Armour from engaging in the food catering or restaurant businesses?

4. If Greyhound is ordered to be made a party to the 1920 action and the cause remanded, what issues are to be tried in the District Court?

STATEMENT.

This is a direct appeal from an order of the District Court dismissing a petition by the Government to summon Greyhound to appear before the Court and to grant injunctive relief against it. The petition, in substance, alleged: That on February 27, 1920, Armour was perpetually enjoined from dealing in specified food products and from "owning 'any capital stock or other interest whatever' " in any corporation in the prohibited businesses; that Greyhound, through its subsidiaries, was engaged in certain catering and restaurant operations (hereinafter referred to as "restaurants"); that Greyhound had acquired control of 86%* of the stock of Armour and that the control of Armour by Greyhound interfered with the 1920 Decree "by putting Armour in a corporate relationship with a company which deals in food items prohibited to Armour by the Decree" (App. 51-54). The petition was supported by an affidavit by an attorney of the Department of Justice which made substantially the same allegations as those contained in the petition (App. 55-58).

The District Court heard argument by Government counsel in support of the petition at a hearing at which counsel for Greyhound were present (App. 61), but who never entered formal appearances (App. 61, 64). At the conclusion of the argument the District Court delivered an opinion from the bench (reproduced at App. 82-86), and entered an order dismissing the petition because it failed to state any ground upon which relief could be granted (App. 87, 88).

* As the Government points out (p. 14), Greyhound (but not one of its subsidiaries, as the brief states), now owns 100% of Armour's common stock.

The Court stated in its opinion (App. 84):

> "From the foregoing it is clear that Greyhound may not lawfully assist any party, such as Armour, in committing acts prohibited by the 1920 consent decree. But it also follows that Greyhound, which was not a party to the 1920 action, and which at that time had no interest in any of the parties, is not itself bound in any way by the decree and may not be enjoined from committing any acts on the ground that they are prohibited by the decree. It is the latter that the government now seeks to do. The government has not charged that Greyhound has or threatens to cause or assist Armour, or any of the lines of commerce prohibited to them by the decree. The government's petition states that by acquiring Armour stock, Greyhound has placed Armour in a 'corporate relationship' with a company that deals in prohibited food items. But the decree does not speak in terms of the defendants dealing in the specified lines of commerce, and to make out a violation the government must charge such dealing by a party to the decree."

The District Court judge was Julius Hoffman, who was thoroughly familiar with the Packers' Decree since he had presided over lengthy hearings on petitions filed by certain of the corporate defendants which had sought modification of the Decree. The petitions were denied in an opinion reported in 189 F. Supp. 885 (1960), which was affirmed by this Court without opinion in 367 U. S. 909 (1961). Moreover, he was thoroughly familiar with the legal issues posed by the present petition against Greyhound since, with some exceptions, they raise the same ones that were raised by the Government's petition to make General Host Corporation a party to the Packers case and to enjoin it from taking any action to control Armour's affairs.

SUMMARY OF ARGUMENT.

In this appeal, the Government, in effect, seeks to modify a Court decree without trial and apply new and unheard-of terms, contrary to the Federal Rules of Civil Procedure, to a non-party, on the pretext that this unique and unfair procedure is required to maintain the integrity of other antitrust decrees.

In 1920 Armour, Swift, Wilson and other specifically named and identified defendants agreed to settle a lawsuit. No trial occurred. The negotiated terms, called the *Packers Decree*, are circumscribed: some conduct and some persons were included in the verbose terms; others were excluded.

That lawsuit—never tried—was directed at practices and institutions now historical anachronisms: The decree speaks of "branch house route cars," "auto trucks," "market terminal railroads," and other current World War I practices supposedly used to injure smaller competitors. Each packer agreed not to process or deal in a variety of fruits, vegetables, and miscellaneous articles from babbitt to rolled steel. Unknown and future stockholders of the packers were *not* included in the settlement. The packers, in addition, were free to merge. Three years after the settlement, Armour acquired the assets of Morris Packing Co., a forgotten viable original signatory of the decree. In short, the settlement did not purport to be a universal antitrust injunction against all conduct and all persons.

Greyhound is a stranger to the decree. As a wholly-owned subsidiary of Greyhound, Armour's conduct is impeccable. The Armour distribution system, its forgotten "branch house route cars"—or modern refrigerated trucks

—do *not* carry the vegetables, fruits or "miscellaneous" products identified in the decree. The Greyhound Corporation, as a controlling investor in Armour, has not directed or caused Armour to conduct its affairs inconsistently with the prohibitions of the decree. At no point in this case—in the petition or supporting affidavit—has there been the slightest evidence that Armour's *conduct* violates the provisions of the decree.

The petition and this appeal advance a unique and startling proposition to create a decree violation where none in fact exists: this presumptively lawful investment by Greyhound creates—it is said—a "relationship" that transfers the injunction to other corporate subsidiaries of Greyhound. Armour's *conduct*—through such legal osmosis—includes the business activities of other corporate subsidiaries of Greyhound. Since these other subsidiaries furnish food products as part of a restaurant service—Armour "owns" a prohibited interest in the subsidiaries and a decree violation is created.

A new rule of construction for all antitrust injunctions is advanced. The words mean what the Government says they mean—no more, no less. Every antitrust injunction would, by the suggested reasoning, include terms not part of any court order:

> First, the injunction applies to other businesses of non-party strangers who may invest in the corporation subject to the decree.
>
> Second, the "purposes" of the decree—as seen by the Government—are controlling: action inconsistent with these "purposes" subjects non-parties to court proceedings even if the conduct by the non-party does not cause the party to transgress the injunction.
>
> Third, all decrees apply to future stockholders of a party irrespective of particular language of the decree.

Accepted procedures used to enforce a decree, modify its terms, or apply it to non-parties are courses of action ignored and abandoned in this appeal, which chart a wholly new course and seeks a rule—unprecedented—that

would embellish *every* antitrust decree with new, ill-conceived terms.

This case involves a simple, unsophisticated issue: How can a non-party violate an injunction unless charged with aiding or causing a party to violate the decree?

The only material rule, Rule 65(d), does not apply; the District Court's well-stated analysis is dispositive:

> The consent decree entered in 1920 was in the nature of a permanent injunction. Rule 65(d) of the Federal Rules of Civil Procedure provides that "Every order granting an injunction . . . is binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order . . ." This rule states what has long been accepted, that an injunction binds only those who are parties to the action. As Judge Learned Hand said in Alemite Manufacturing Corp. v. Staff, 42 F. 2d 832 (2d Cir. 1930):
>
> > ". . . no court can make a decree which will bind anyone but a party; a court of equity . . . cannot lawfully enjoin the world at large . . ."

The appeal buries and obfuscates this actual limited issue with complicated antitrust references taken from a food and meat bibliography supposedly showing "current" substantial anticompetitive practices by meat packers. The Court is directed to technical studies, reports of national commissions, and data collected from the Economic Research Service. Such "evidence" should be stricken. It is a patent attempt to color the case with facts not of record and designed to construct an antitrust case in the middle of a simple issue involving a decree.

The plan of the appeal is apparent. An ominous—supposedly overriding—public policy consideration is concocted as a makeweight to persuade this Court to abandon traditional equitable principles. The heart of this appeal is that the decree must extend to investing stockholders and the "relationship" to Greyhound's restaurant subsidiaries

must be eliminated to prevent the wholesale circumvention of all other antitrust decrees. This assertion is specious. It ignores the language of the decree and Rule 65(d).

The supposed plan to circumvent antitrust decrees by a forbidden "relationship" adopts the Government's own plan in which another packer, Wilson & Co., was permitted by Court order to *maintain* an identical relationship with LTV and another LTV subsidiary specializing in decree products. The notion that Greyhound has stumbled on a mechanism to avoid "structural" antitrust decrees is not credible; Greyhound's conduct is permitted by the Government's repeated interpretation of the terms of the decree at issue.

The Government's brief collects in an appendix citations to selected "structural" decrees with a stern admonition that antitrust enforcement generally will be undermined if the Government's current position is not sustained. Nonsense. The restraint on industry—preventing specific mergers—is not this proceeding or a 1920 decree, but the Clayton Act (Section 7) and this Court's well-stated decisions from *Brown Shoe Co.* v. *F. T. C.*, 370 U. S. 294 (1961) to *F. T. C.* v. *Procter & Gamble*, 386 U. S. 568 (1967)—defining the parameters of permissible corporate acquisitions.

Three years after the execution of the Packers Decree—when the purposes and competitive ills were fresh to the Court and the parties Armour acquired the assets of Morris & Company, one of the signators to the decree. The legality of the acquisition under the Packers and Stockyards Act was sustained by the Secretary of Agriculture. The decree was not intended to cover all possible anticompetitive acts by Packers or future stockholders but was limited to a specified conduct against specified persons. Now, 50 years later, these terms, so clear and direct, are to be extended by unilateral modification and applied to nonparties on the pretext that all antitrust decrees are endangered.

ARGUMENT.

I.

THE GOVERNMENT ASSUMES, CONTRARY TO THE EXPRESS LANGUAGE OF THE DECREE, THAT ITS TERMS APPLY TO CONTROLLING STOCKHOLDERS AND PROHIBIT NON-PARTIES DEALING IN DECREE PRODUCTS FROM CONTROLLING A PACKER.

The Government contends that Greyhound's ownership of Armour "obstructs and interferes" with the 1920 Packers' Consent Decree because Greyhound also owns two subsidiaries* that are engaged in the restaurant business. According to the Government, the 1920 Decree enjoins Armour from being in the restaurant business; hence, Greyhound, so long as it owns subsidiaries which are also in that business, is prohibited from owning Armour, because obstruction and interference result from this simultaneous ownership of Armour and the food subsidiaries.

Thus, the Government states that one of the questions presented is:**

> "Whether Greyhound's acquisition of Armour created a relationship between Greyhound's subsidiary Armour and Greyhound's food service and restaurant subsidiaries that is prohibited by the Decree." (p. 2.)

If the above issue is the ultimate one in this case, it can be disposed of summarily by the Court. The "relationship" between Armour and Greyhound's food subsidiaries is the same "relationship" that always exists between sub-

* Although the petition alleges that Greyhound owns three (A. 52), Greyhound disposed of one of them while this action was pending.

** This question has been recast from the one stated in the Jurisdictional Statement.

sidiaries of the same corporation, *viz.*, they have a parent corporation that owns them both. But where is there any provision in the Decree that "prohibits" this kind of relationship? The simple answer is that there is none.

The Government assumes that the intention of the Decree was to prohibit stockholders of the corporate defendants—existing and in the future—from engaging in the same businesses forbidden to the corporate defendants. Thus, it says, the "separation intended by the Decree is destroyed" if any defendant packer "enters an ownership relation with a firm which buys meat for sale to consumers or which is substantially engaged in the prohibited food lines" (p. 15).

Putting to one side for the moment legal and constitutional impediments to binding non-parties, such as Greyhound, in an injunction action, there is nothing in the Decree itself that permits the Government's interpretation.

Paragraphs Fourth and Eighth of the Decree are paragraphs enjoining the corporate defendants from dealing in specified food and other items. Each paragraph, in turn, is based upon allegations in the petition that the packers had improperly used "the advantages afforded by" the meat distribution facilities to distribute other foods, "with comparatively no increase in overhead" (App. 20, 21).

The decree in paragraph Fourth contains the controlling provision involved in this case.

> "That the corporation defendants and each of them be, and they are hereby, perpetually enjoined and restrained from, * * * either directly or indirectly, by themselves or through their officers, directors, agents, or servants, engaging in or carrying on, either by concert of action or otherwise, * * * the manufacturing, jobbing, selling, transporting (except as common carriers), distributing, or otherwise dealing in * * *"

a number of non-meat foods and miscellaneous products (App. 31-33). It further enjoins the corporation defendants from owning, either directly or through their officers, directors, agents, or servants, stock or any other interest in any firm or corporation engaged in the specified businesses (App. 33). Essentially identical provisions in paragraph Eighth prohibit the corporate defendants from engaging in trade in fresh milk and cream (App. 37).

These provisions are clear. The corporate defendants may not deal in the specified articles, either directly or indirectly—that is, through their officers, directors, agents, or servants acting on their behalf or through subsidiary corporations. *However, paragraphs Fourth and Eighth make no mention of stockholders of the packers, whether individuals or corporations*, and thus in no way restrict the businesses in which such stockholders may be engaged.

We think it plain that the omission of stockholders in paragraph Fourth shows an intent that only the corporate defendants and those acting on their behalf be enjoined by that paragraph. The Government's contention that Armour's "ownership relation" with a firm such as Greyhound, which, as sole stockholder, owns Armour, destroys the separation intended by the Decree, simply has no support in its language.

The Decree's limited restrictions on activities of the individual defendants, several of whom were controlling stockholders of meat packer corporations, provide further proof that the Decree was not designed to prevent the packers "from having any ownership relation with" stockholders engaged in a food business. Certain individuals who were large stockholders of defendant companies were named as defendants because, through their substantial financial interests in stockyards, terminal railways, and other institutions connected with the stockyards, and their control of the subsidiary corporations dealing in the substitute

foods, these individuals had enabled the corporate defendants to carry out the alleged restraints of trade and attempted monopolization (App. 23, 24).

Paragraph Fifth of the Decree limits the interests these individual defendants—stockholders—may hold in companies engaged in certain of the product lines forbidden to Armour by paragraph Fourth. Significantly, paragraph Fifth does not entirely preclude the individual defendants from engaging in those businesses but merely enjoins them from owning 50 per cent or more of the effective voting stock of corporations trading in the prohibited articles (App. 33-35). The final paragraph of paragraph Fifth clearly indicates the purpose of the restrictions on the individual defendants. It enjoins those defendants:

> "* * * from individually or jointly, either directly or indirectly, by themselves or through their agents, servants, or employees, adopting any device or arrangement which by reason of the relation of said individual defendants or any of them to the corporation defendants or any of them would have the purpose or effect of giving to such business of dealing in the articles hereinabove * * * mentioned * * *, in which business such individuals or any of them may be substantially interested, an advantage over their competitors similar in purpose or effect to any advantage now enjoyed by any of the corporation defendants through their distributing system (App. 35).

Thus, the Decree permits an individual defendant, who may be a controlling stockholder of a meat packer, also to own effective control of a corporation dealing in a substitute food product, provided he does not misuse his connections with the packers to give the substitute food company an advantage over its competitors.

In sum, no specific provision of the 1920 Consent Decree purports to affect the outside activities of non-defendant stockholders of the meat packers, and not even the defend-

ant-stockholders were completely proscribed from engaging in the businesses forbidden to the packers themselves. The Decree, therefore, does not, in terms, bar a non-defendant stockholder, individual or corporate, from engaging in the substitute food business; nor, contrary to the basic premise of the Government's argument, does it erect a complete structural separation of meat packer and other food interests.

II.

THE PETITION AND AFFIDAVIT DO NOT ALLEGE ANY FACTS SHOWING THAT GREYHOUND'S OWNERSHIP OF ARMOUR IS AIDING AND ABETTING ARMOUR TO VIOLATE THE 1920 PACKERS' DECREE OR THAT AN INJUNCTION AGAINST GREYHOUND IS REQUIRED TO PROHIBIT IT FROM PLACING ARMOUR IN VIOLATION OF THE DECREE.

The District Court regarded the Government's petition as presenting primarily questions of interpretation of Rule 65(d) of the Federal Rules of Civil Procedure (App. 82-86), which, so far as relevant, provides:

> "Every order granting an injunction * * * is binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise."

Rule 65(d), of course, was not in effect when the 1920 Decree was entered, but, as this Court pointed out in *Regal Knitwear Co.* v. *N. L. R. B.*, 324 U. S. 9, 14:

> "This [rule] is derived from the common-law doctrine that a decree of injunction not only binds the parties defendant but also those identified with them in interest, in 'privity' with them, represented by them or subject to their control. In essence it is that defendants may not nullify a decree by carrying out prohi-

bited acts through aiders and abettors, although they were not parties to the original proceeding."

Action as an alter ego, or in collusion, is required to find "concert or participation" under Rule 65(d). *Thaxton* v. *Vaughan*, 321 F. 2d 474, 478 (C. A. 4); *United Pharmacal Corp.* v. *United States*, 306 F. 2d 515, 518 (C. A. 1). As the District Court observed, the Government has not charged that "Greyhound has or threatens to cause or assist Armour, or any of the original defendants, in dealing in any of the lines of commerce prohibited to them by the decree." (App. 84.)

It is also well settled that an injunction is not enforceable against third persons merely because they had knowledge of it. *Chase Nat. Bank* v. *Norwalk*, 291 U. S. 431, 437; *Kean* v. *Hurley*, 179 F. 2d 888 (C. A. 8).

Mr. Justice Learned Hand eloquently expressed this doctrine in *Alemite Mfg. Corp.* v. *Staff*, 42 F. 2d 832 (C. A. 2, 1930), when he said:

> "We agree that a person who knowingly assists a defendant in violating an injunction subjects himself to civil as well as criminal proceedings for contempt. This is well settled law. * * * On the other hand no court can make a decree which will bind any one but a party; a court of equity is as much so limited as a court of law; it cannot lawfully enjoin the world at large, no matter how broadly it words its decree. If it assumes to do so, the decree is pro tanto brutum fulmen, and the persons enjoined are free to ignore it. It is not vested with sovereign powers to declare conduct unlawful, its jurisdiction is limited to those over whom it gets personal service, and who therefore can have their day in court. Thus, the only occasion when a person not a party may be punished, is when he has helped to bring about, not merely what the decree has forbidden, because it may have gone too far, but what it has power to forbid, an act of a party. This means that the respondent must either

abet the defendant, or must be legally identified with him."

Under these elementary principles, an injunction against a corporation such as Armour does not bind its stockholders such as Greyhound, unless the litigation in which the injunction was entered was controlled or participated in by the stockholders, which obviously was not the case here. *Zenith Radio Corp.* v. *Hazeltine Research*, 395 U. S. 100, 110; *Foreign & Domestic Music Corp.* v. *Licht*, 196 F. 2d 627 (C. A. 2, 1952); *Hornstein* v. *Kramer Bros. Freight Lines, Inc.*, 113 F. 2d 143 (C. A. 3, 1948). In the *Zenith Radio* case, this Court held that it was error to enter an injunction against a non-party parent corporation of a subsidiary corporation which was a party to a proceeding, without making a determination that the parent was in active concert or participation in the proceeding to which the subsidiary was a party.

These principles are not challenged by the Government.

The Government attempts to avoid them by contriving a violation by Armour by reason of Greyhound's simultaneous ownership of Armour and of Greyhound's food-dispensing subsidiaries. This contrived violation, in turn, is brought about by completely ignoring or reversing the meaning of a simple word used in the Decree (to the extent that the argument recognizes the word's presence in the decree at all), *viz.*, the word "owning."*

The Government's argument nowhere says that Armour "owns" any food dispensing business but that: Armour is enjoined from "having" [*sic*] (p. 17) any interest in a company dealing in the forbidden food items; Greyhound's

* This theory was never advanced in the court below, and is now being urged for the first time. Further, it was never advanced in the *General Host* appeal although the Government says "This appeal presents the same legal questions that were before the Court last term." (p. 3)

subsidiaries deal in such items; Armour, "has" [*sic*] (p. 25) an "interest" in Greyhound's subsidiaries; *ergo*, *Greyhound's* ownership of Armour is "interfering" with Armour's obedience to the Decree.

The argument, strangely, is postulated on the last paragraph of paragraph "Fourth" of the Decree, which, because of its importance, we set forth in full (App. 33).

> "And the corporation defendants and each of them be, and they are hereby, further perpetually enjoined and restrained from *owning*, either directly or indirectly, severally or jointly, by themselves or through their officers, directors, agents, or servants any *capital stock or other interests* whatsoever in any *corporation, firm or association* except common carriers, which is in the business, in the United States, of manufacturing, jobbing, selling, transporting, except as common carriers, distributing, or otherwise dealing in any of the above-described products or commodities." (Italics added.)

The question actually posed *by the Decree as written*, then, is whether Armour "owns" an "interest" in the two Greyhound food-dispensing subsidiaries. It may be that a sibling corporation is "interested" in the welfare of a fellow sibling, but that is a wholly different concept from *ownership* of "stock or other [legal] interests" therein.

The meaning of the decretal clause is perfectly clear. It certainly does not have the meaning the Government, without explanation, seeks to engraft on it. The decretal clause was necessary to prevent the corporate defendants from evading the injunction through the device of subsidiaries to carry on business which the corporate defendants could not and whose "capital stock" (in the instance of corporation) or other power of control (as a membership in a joint venture or an association) they owned. Armour thus was enjoined from *owning* an interest in a

company that dealt in products that it was forbidden to deal in. But unless Armour owns capital stock of Greyhound or its food subsidiary neither Armour nor Greyhound is violating the decree.

The Government quotes the clause with the word "owning" at page 7 of its brief, but ignores and subverts it in its argument. Uniformly the brief, wholly without justification, interpolates the word "has" or a variant thereof, rather than "owns" in describing Armour's "interest" in Greyhound's subsidiaries (pp. 2, 14, 15, 17, 22, 25, 27). In so doing, the Government is simply stating that Armour and Prophet Foods, for example, are both siblings of Greyhound.

We suspect that this is the first time that it has ever been seriously urged that a subsidiary "owns" an interest in all the other subsidiaries that its parent may own. Armour no more "owns" any interest in the Greyhound subsidiaries than those subsidiaries do in Armour. Armour and the other subsidiaries are not "owners" of anything beyond their own assets, and they, in turn, are "owned" by Greyhound. But in the Government's Alice in Wonderland* and topsy-turvy legal world Armour really "owns" Greyhound instead of being "owned" by it.

This Court has said that words of statutes should be interpreted where possible in their ordinary everyday sense. *Malat* v. *Ridell*, 383 U. S. 569, 571. And in *Addison* v. *Holly Hill Co.*, 322 U. S. 607, 618, this Court said, "After all, legislation when not expressed in technical terms is addressed to the common run of men and is therefore to be understood according to the sense of the thing, as the ordinary man has a right to rely on ordinary words addressed to him."

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*"When I use a word," Humpty Dumpty said, "it means just what I choose it to mean—neither more nor less." Lewis Carroll, "Alice's Adventures in Wonderland," Chap. 6.

As we show below, the same interpretation should be given to well-known words used in injunctions, the violation of which can result in severe penalties. Hence, although we appreciate that the interpretation of statutes or legal documents is not necessarily controlled by the dictionary, the dictionary is the normal place to begin in interpreting a document that bears no indicia that its words were used other than in their ordinary and usual meanings.

Webster's 3rd *New International Dictionary* defines "owner":

> "One that has the legal or rightful title, whether the possessor or not."

Ballentine's Law Dictionary (3rd Ed., 1960):

> "One who has complete dominion over particular property. * * * The person in whom the legal or equitable title rests. * * * In common understanding, the person who, in case of the destruction of property, must sustain the loss."

Black's Law Dictionary (4th Ed., 1951):

> "The person in whom is vested the ownership, dominion, or title of property; proprietor. * * * He who has dominion of a thing, real or personal, corporeal or incorporeal, which he has a right to enjoy and do with as he pleases, even to spoil or destroy it, as far as the law permits, unless he be prevented by some agreement or covenant which restrains his right. * * *"

See, also, 73 C. J. S., "Property," § 13, p. 197.

It is patent that within the meaning of any of these definitions Armour has no title to, or dominion over, Greyhound's food subsidiaries. We suggest that it is legally preposterous to claim that Armour "owns" an interest in the Greyhound food-dispensing subsidiaries within the meaning of the 1920 Decree.

Judicial decrees, and injunctions in particular, are not to be given tortured and unnatural meanings merely because the Government believes that some beneficial end will be achieved thereby. Injunctions are somewhat akin to criminal statutes in that both proscribe specified acts or omissions. And it is elementary that "A criminal statute is to be construed strictly, not loosely." *United States* v. *Boston & M. R. Co.*, 380 U. S. 157, 160.

Frequently, businessmen must make decisions involving the fates of their companies based upon the interpretation to be given to an injunction. Neither they, nor their attorneys, should be charged with knowing what an injunction forbids, beyond that found in the ordinary meanings of words used in it. With reference to this particular case, Greyhound now has a huge investment in Armour which the Government seeks to place in jeopardy by giving the "ownership" clause a meaning that rationally cannot be ascribed to it. Injunctions simply are not interpreted in this manner—particularly consent injunctions against a person who never consented.

In *International Longshoremen's Ass'n* v. *Philadelphia Marine Trade Ass'n*, 389 U. S. 64, 75, this Court, after pointing out that Federal Rule 65(d) is a successor to Section 19 of the Clayton Act, said that "Section 19 was intended to be 'of general application', to the end that '[d]efendants * * * never be left to guess at what they are forbidden to do. . . .'"

And at p. 76, this Court further said:

> "The judicial contempt power is a potent weapon. When it is founded upon a decree too vague to be understood, it can be a deadly one. Congress responded to that danger by requiring that a federal court frame its orders so that those who must obey them will know what the court intends to require and what it means to forbid."

Although the Court's remarks in the above case were addressed to the impropriety of vague decrees, they apply with equal force where the meaning of a decree is in issue.

In *J. I. Case Co.* v. *N. L. R. B.*, 321 U. S. 332, 341, this Court said:

> "Courts' orders are not to be trifled with, nor should they invite litigation as to their meaning. It will occur often enough when every reasonable effort is made to avoid it."

In *Terminal R. R. Ass'n* v. *United States*, 266 U. S. 17, 29, this Court said:

> "In contempt proceedings for its enforcement, a decree will not be extended by implication or intendment beyond the meaning of its terms when read in the light of the issues and the purpose for which the suit was brought; and the facts found must constitute a plain violation of the decree so read."

The fact that this is not formally a contempt proceeding is no reason for not applying the rule of construction laid down in the above case. Injunctions have the same meaning whether the object of the proceeding is to punish someone for a violation or to obtain a further injunction against alleged "interference" with an unmodified decree by a non-party.

Throughout its brief the Government speaks of the "structural terms" of the decree and says that the "Decree's purpose is principally structural rather than behavioral" (*e.g.*, pp. 15, 17). This unwarranted exercise of inventive semantics accomplishes nothing.

The interpretation to be given to a decree is not to be determined or influenced by the Government's label. Rule 65(d) governs all injunctions and makes no distinction, depending upon the label the Government seeks to pin on a particular one. The District Court appropriately observed:

"In addition, a 'purpose' approach is wholly inappropriate because it is the parties who have purposes: the government to secure some relief while conserving resources; the defendants to save money and time, avoid the prima facie evidence rule in private actions, and limit the risk of a more stringent remedy. It is impossible to see how a general scheme can be surmised from provisions which represent a compromise of the parties with respect to the most crucial matters in an antitrust proceeding. And, as it has been observed, nowhere is such a compromise more evident than in the initial decree entered in this case. • • • If the situation created by Greyhound's acquisition of Armour stock is inconsistent with whatever 'purposes' the government believes attach to the 1920 decree, there is still no showing of a violation, or of the kind of 'interference' that will warrant an injunction against a non-party." (App. 85, 86.)

There is a further answer to the Government's game of semantics: All injunctions are "behavioral" in that they either prohibit or command a person from engaging in, or requiring performance of, specified acts. Antitrust injunctions have a "structural" effect in an industry after "behavioral" compliance. Thus, a Court, in rectifying the effects of antitrust violations, may enter an injunction which results in the restructuring of an entire industry. But it adds nothing to the scope of an injunction, or the persons bound by it, to say, as the Government's brief says, that its "purpose" was principally structural rather than behavioral. In the last analysis, the "structural" effect of any injunction is dependent upon the "behavior" enjoined or required, and the persons bound by it.

The Government cites several cases laying down principles that have no application to the case at hand. With one exception, they fall into one of three categories: (1) Contempt proceedings against a non-party who aided a party to violate an injunction; (2) contempt proceedings against a party who violated an injunction and (3) Injunc-

tion proceedings to enjoin a non-party from interfering with compliance by a party who is willing to obey an injunction against him. The simple answer to them is that there is no allegation that Greyhound is violating the Decree, or is aiding and abetting Armour to violate it, or is preventing Armour from complying with it.

Thus, the Government cites (p. 30) *Seward* v. *Paterson* [1897], 1 Ch. 545, 554 (C. A.); and *Marengo* v. *Daily Sketch, Ltd.*, 1 All. Eng. Rep. 406 (H. of L. 1948),* which hold that the Court has jurisdiction to punish for contempt a non-party who, knowing of the injunction, aids and abets the defendant in violating it. It is hardly necessary to go outside of the United States to find authority for a principle embodied in Federal Rule 65(d).

Mississippi Valley Barge Line Co. v. *United States*, 273 F. Supp. 1, 6 (D. C. Mo.),* aff'd, 389 U. S. 579, involved a case where non-parties were acting in concert with the party enjoined to violate the decree with knowledge of it. A motion to enforce the judgment as to them was granted. Under Rule 65(d) they also could have been found in contempt.

Kasper v. *Brittain*, 245 F. 2d 92, 97 (C. A. 6), *cert. den.*, 355 U. S. 834, and *Bullock* v. *United States*, 265 F. 2d 683, 691 (C. A. 6), *cert. den.*, 360 U. S. 909, merely affirmed contempt rulings against parties based on violation of orders enjoining interference with court desegregation orders. The well-recognized obligation of a *party* to obey an injunction, whether erroneous or not, is not an issue on this appeal.

Faubus v. *United States*, 254 F. 2d 797 (C. A. 8), affirmed an injunction against the Governor of Arkansas and others, from using the National Guard to interfere with a court-approved plan of integration. *United States* v. *Wallace*,

* These decisions were relied upon by Mr. Justice Douglas in his dissenting opinion in the *General Host* appeal.

218 F. Supp. 290, enjoined the Governor of Alabama from interfering with a desegregation order. These cases are within the third category above mentioned. *Brewer* v. *Hoxie School District No. 46*, 238 F. 2d 91 (C. A. 8), did not even involve interference with a Court order, but merely enjoined interference with voluntary desegregation.

No one doubts the proposition that a Court may hold in contempt a non-party who knowingly aids a party in violating a decree. Likewise, no one doubts the power of a Court to protect its decrees from actions by a non-party which prevent a party, willing to obey, from complying. In such cases a court can, after appropriate proceedings, enter an injunction against such interference or obstruction.* The trouble with the Government's petition is that it has not alleged such a case. Greyhound is not aiding Armour to violate the Decree, nor obstructing efforts by

* Constitutional requirements of due process may require that the alleged "interferer" be given the right to litigate the correctness of the original consent decree as is shown by *United States* v. *Bayer Co.*, 105 F. Supp. 955 (D. C. N. Y. 1952), and *General Aniline & Film Corp.* v. *Bayer Co., Inc.*, 305 N. Y. 479, 113 N. E. 2d 844 (1953). There the Government obtained consent injunctions against Bayer and others from making royalty payments under contracts that violated the antitrust laws. The payee, General Aniline, was not made a party. General Aniline sued for payments allegedly due in a New York state court. Bayer pleaded the consent decree made payments impossible, but the New York Court of Appeals held the consent decree was not binding upon General Aniline.

In the Federal District Court the United States brought a supplemental complaint against General Aniline alleging it was obstructing the consent decree and asking that it be ordered to discontinue its New York action, then still pending in the New York courts. The District Court refused to hold that the consent decree was binding on General Aniline and permitted it to contest the Government's original claim. Summary judgment was later entered in favor of the Government. 135 F. Supp. 65 (D. C. N. Y.).

In the above case General Aniline was certainly "interfering" with Bayer's obedience to the consent decree which it was willing to obey since it enjoined the payment of money by Bayer (105 F. Supp. at 957). Hence, mere proof of "interference" by a non-party

Armour to comply. The Government attempts to contrive "interference" or "obstruction" by the specious argument, already discussed at length, that Armour "owns" an interest in the Greyhound food subsidiaries, contrary to the 1920 Decree.

III.

THE GOVERNMENT POSITION IN THIS APPEAL IGNORES THIRTY YEARS OF CONTROLLING AND CONTRARY INTERPRETATION UNDER WHICH STOCKHOLDERS HAVE BEEN PERMITTED TO MAINTAIN THE RELATIONSHIP NOW ATTACKED.

The Government contends that, if a stockholder is engaged in a business forbidden to Armour, it cannot acquire control of Armour. In point I we have shown that the plain language used does not permit such an interpretation. We now show that, until this proceeding, and the proceeding against General Host, the Government has consistently interpreted the Decree contrary to its present position.

The petition against Greyhound was filed June 18, 1970 (A. 54). Even before this, the Government had concluded a settlement with Ling-Temco-Vought, Inc. on March 10, 1970 (App. 24), pursuant to which a consent decree was

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against a party willing to obey a consent decree does not necessarily preclude the non-party from contesting the correctness of the underlying injunction.

We are not suggesting, on the authority of *Bayer*, that Greyhound, as an alleged "interferer" with the 1920 Consent Decree against Armour, would, upon any remand, have the right to make the Government prove the charges contained in its 1920 complaint against Armour. We do suggest, however, that when a non-party is charged with "interfering" with the alleged "purposes" of an antitrust consent decree that that issue be resolved in the light of the state of competition in the relevant markets at the time when the hearing may be held. This aspect of the case is discussed at greater length in the concluding section of this brief.

entered on June 10, 1970,* that interpreted the Decree exactly contrary to the Government's present contention. The LTV consent decree permits LTV to control Jones & Laughlin, a corporation that deals in products forbidden to the Packers, while at the same time it owns a controlling interest in Wilson & Co., a corporation bound by the 1920 Consent Decree. In more detail:

LTV owns more than 80% of the common stock of Wilson & Co. LTV, through a subsidiary, owns 81.4% (App. 56) of the common stock of Jones & Laughlin. The 1920 Decree, in addition to prohibiting the Packers from dealing in specified food items, also forbade them from dealing in "structural steel" and "bar iron" (App. 33). These products, needless to say, are manufactured and sold in large quantities by Jones & Laughlin.

Greyhound is a holding company that controls a number of subsidiaries, including bus operating companies, Armour, and two corporations engaged in the restaurant business. Thus, the situation between LTV and Greyhound in their relations to a packer-subsidiary is exactly parallel (See Exhibit A attached).

The LTV case is not the only time that the Government has interpreted the 1920 Decree exactly opposite to the way it "interprets" it now.

The Government for years acquiesced, with full knowledge, in the joint control by the Prince family interests of both Armour and the Chicago stockyards. Since the provision in paragraph Second of the Decree forbidding meat packers to own stockyards is in its language essentially identical to paragraph Fourth, which forbids meat packers to deal in groceries, this continuous interpretation of the stockyard clause by the agency charged with enforcement of the Decree, is additional persuasive evidence that no

* The decree is reproduced in Supp. A. 25-40, but date of entry is not shown. It is reported in 1970 Trade Cases ¶ 73,105.

complete structural separation of meat packers, stockyards, and substitute food interests was intended.

The uncontested facts regarding the interlocking relationship between Armour and the stockyards, through the Prince family, as of the close of 1968, are as follows (App. 46-50):

Pursuant to Paragraph Second of the 1920 Decree, Armour was compelled to divest itself of the Union Stock Yard & Transit Co., which operated the Chicago public stockyards* (App. 47). This stockyards company owned directly 12,600 shares of Armour common stock and itself was wholly owned by F. H. Prince & Co., Inc., which owned,

* Throughout this proceeding the Government has insisted that Greyhound cannot control Armour while it also owns subsidiaries engaged in the restaurant business. Its entire case is premised on the proposition that the Decree forbids Armour to engage in the restaurant business. There is no language so providing, but the Government points to the exception in paragraph Fourth, which permits the packers to operate restaurants primarily for the benefit of their employees. The same paragraph also excepts laundries, a business not otherwise mentioned, either in the complaint or the Decree.

We dispute the Government's assumption that the decree enjoins the packers from engaging in the restaurant business. The scope of the decree is not to be determined by what the Government termed the "negative implications" of the exception in its Jurisdictional Statement. An injunction cannot be extended by implication. *Terminal R. R. Ass'n* v. *U. S.*, 266 U. S. 17, 29. In *United States* v. *Swift & Co.*, 286 U. S. 106, 115, this Court held that the purpose of enjoining the Packers from "dealing" in "groceries" was in order to protect wholesalers and retailers therein from possible destructive competition. Restaurant operators are not regarded as "dealers" in "groceries."

Again, the Government's prior interpretation of the Decree supports Greyhound's position and is contrary to its present position in this proceeding. As shown in the text, F. H. Prince & Co. and related interests controlled about 13% of the common stock of Armour (A. 49). The Prince corporation owns 100% of the Union Stockyards Company, which includes among its business activities the operation of restaurants (A. 47). There is no difference in principle between Greyhound simultaneously controlling Armour and its restaurant subsidiaries, and the Prince interests simultaneously controlling Armour and a subsidiary corporation operating restaurants.

either directly or through other subsidiaries, over 356,000 shares of Armour common stock (App. 48). Moreover, the stock of F. H. Prince & Co., Inc. was owned by the Frederick H. Prince Trust of 1932, a trustee and income beneficiary of which was William Wood Prince, former Chairman and Chief Executive Officer of Armour (App. 47). This trust and other related trusts, and Mr. Prince directly, owned additional shares of Armour stock. The Prince trusts and the officers and directors of Armour working under Mr. Prince controlled approximately 13 per cent of the outstanding common stock of that company (App. 47, 48).

Nor was the connection between Armour and the Union Stock Yard & Transit Co. solely one of joint ownership. In addition to being Chairman and Chief Executive Officer of Armour, Mr. Prince served as President and Director of F. H. Prince & Co., Inc., which owned the stockyard company. James Donovan was a director and member of the executive committee which controlled the daily operations of Armour, as well as Chairman of the Union Stock Yard & Transit Co., Vice President and Director of F. H. Prince & Co., Inc., and Co-Trustee of the Frederick H. Prince trust. Charles Potter was a director and member of the executive committee of both Armour and F. H. Prince & Co. and was president of the stockyard company (App. 47).

Thus, it is not disputed that the management of Armour owned, directly or indirectly, effective control of both Armour and certain public stockyard companies and restaurants, and that there was substantial interlocking of directorates.

Paragraph Second of the Decree prohibits:

> "the defendants * * * from owning, either directly or indirectly, individually or by themselves, or through their officers, directors, agents or servants, any capital stock or other interest whatsoever in any public stockyard market company in the United States * * *" (App. 29)

This paragraph was at least as important a part of the relief afforded by the Consent Decree as were the similarly-worded paragraphs Fourth, Fifth, and Eighth. The great concern of the complaint with the effects upon commerce of the control of the stockyards by the packers and individuals associated with them is evident, for a substantial portion of the complaint was devoted to a description of how ownership of the stockyards permitted the packers to restrain trade in meat (App. 12-15).

There is no difference in principle between the Princes' control of the stockyards (forbidden to Armour by paragraph Second of the Decree) and Greyhound's control of restaurant subsidiaries, for in both cases those holding control of Armour are engaged in businesses forbidden to Armour itself—assuming that the Decree forbids Armour to engage in the restaurant business.

The Government has never denied that it has been aware of the interlocking ownership of Armour and the stockyards since at least the 1958-60 modification proceedings (App. 50). Nor has it denied that no proceeding was ever instituted based on the theory that the Decree mandated "complete separation" of meat packer and stockyards interests (App. 50).

The Government attempts to pass off the Prince situation by saying, "that it did not involve any corporate relationship between Armour and the Stockholders, in which Armour was prohibited from owning any interest under Paragraph Seventh of the decree." (p. 35). This is no valid distinction because, in this context, individuals as well as corporations could forge anticompetitive interlocking relationships. Indeed, the very allegations of the petition to which the stockyards clause of the decree responds referred to the efforts of the "parent companies and their controlling heads" to obtain control of stockyards and their appurtenances (App. 17); and the stockyards clause itself extends to all defendants, individual as well as corporate.

The real reason for the Government's acquiescence in the Prince interests' control of the Stockyards business was that, like Greyhound, they were the controlling shareholders of Armour, not Armour itself, and as such, under any reasonable reading of the decree, were not bound by its provisions.

The Government's interpretation of the decree for at least a generation—consistent with the Greyhound's legal position—is disposed of by noting that the Government can not be "estopped". (P. 34) The lessons taught by this history have little to do with estoppel but a great deal to do with the correct "interpretation" of the decree's language.

Although a consent decree is to be treated as a judicial act and not as a contract (*United States* v. *Swift & Co.*, 286 U. S. 106, 115), numerous decisions have stated that, in construing them, their contractual aspect should be considered. *American Radium Co.* v. *Hipp, Didisheim Co.*, 279 F. 601, 603 (D. C. N. Y.), aff'd 279 F. 1016 (C. A. 2); *Hodgson* v. *Vroom*, 266 F. 267, 268 (C. A. 2); *Torquay Corp.* v. *Radio Corp. of America*, 2 F. Supp. 841, 843 (D. C. N. Y.); *Artvale, Inc.* v. *Rugby Fabrics Corp.*, 303 F. 2d 283, 284 (C. A. 2); *Hart, Schaffner & Marx* v. *Alexander's Department Stores, Inc.*, 341 F. 2d 101, 102 (C. A. 2); *United States* v. *Hartford Empire Co.*, 1 F. R. D. 424, 426 (D. C., Ohio); *Wilson* v. *Haber Bros.*, 275 F. 346, 347 (C. A. 2); *Davey Tree Expert Co.* v. *Frost & Bartlett Co.*, 300 F. 680, 681; *Freeman on Judgments*, Vol. 3 (5th Ed., 1925), § 1350.

Generally speaking, the practical interpretation of a contract by the parties to it for any considerable period of time before it comes to be the subject of controversy is deemed of great, if not controlling, influence. *Old Colony Trust Co.* v. *Omaha*, 230 U. S. 100, 108. The fact that the Government's interpretations in the Prince and LTV situations are against its present position is to be given special

weight in interpreting the Consent Decree. "The practical construction against interest of a contract by a party thereto may constitute the strongest evidence of its intent." *Cutting* v. *Bryan*, 30 F. 2d 754, 756 (C. A. 9), *cert. den.* 279 U. S. 860; *Natco Corp.* v. *United States*, 240 F. 2d 398, 403 (C. A. 3).

In particular, this Court has held that when, over a substantial period of time, the Government interprets a consent decree to permit certain conduct, it may not suddenly reinterpret the decree to make that conduct unlawful. *United States* v. *Atlantic Refining Company*, 360 U. S. 19 (1959). The rationale for this principle is, reasonably, that in determining the scope of a consent decree the interpretation given by its signatories is entitled to great weight,* and a later change in construction suggests that the signer is attempting to modify the decree *sub silentio*. Id. at 23.

Furthermore, in *Atlantic Refining* this Court held that the Government's contention that its new interpretation would more nearly effectuate "the basic purpose" of the statutes to which the decree related

> "does not warrant our substantially changing the terms of a decree to which the parties consented without any adjudication of the issues. And we agree with the District Court that accepting the Government's

* Analogous is the principle that "[w]hen faced with a problem of statutory construction, this Court shows great deference to the interpretation given the statute by the officers or agency charged with its administration." *Udall* v. *Tallman*, 380 U. S. 1, 16 (1965). "Particularly is this respect due when the administrative practice at stake 'involves a contemporaneous construction of a statute by the men charged with the responsibility of setting its machinery in motion, of making the parts work efficiently and smoothly while they are yet untried and new.'" *Power Reactor Dev. Co.* v. *IUE*, 367 U. S. 396, 408 (1961), quoting *Norwegian Nitrogen Prods. Co.* v. *United States*, 288 U. S. 294, 315 (1933). "When the construction of an administrative regulation rather than a statute is in issue, deference is even more clearly in order." *Udall* v. *Tallman*, *supra*, 380 U. S. at 16.

present interpretation would do just that. Cf. *Hughes v. United States*, 342 U. S. 353 * * *

"We * * * hold that where the language of a consent decree in its normal meaning supports an interpretation; where that interpretation has been adhered to over many years by all the parties, including those government officials who drew up and administered the decree from the start; and where the trial court concludes that this interpretation is in fact the one the parties intended, we will not reject it simply because another reading might seem more consistent with the Government's reasons for entering into the agreement in the first place." 360 U. S. at 23-24 (footnotes omitted).

The Government attempts to pass off the *Atlantic Refining* decision with the comment that "Greyhound is simply making the well-worn plea that the Government should leave it alone because the Government has allowed others to do other things that Greyhound contends were just as bad" (Br. 36). This is not Greyhound's position at all, although it is not inappropriate to observe that uneven-handed administration of a decree is a just cause for complaint. Equal treatment in the enforcement of decrees is equally as important in the administration of justice as is their rendition in the first instance. The interpretation we urge here was knowingly acquiesced in by the Government as to Armour, the only other party to the Decree now before the Court, when Armour had a different controlling shareholder. Our point simply is that the Government's interpretation of the Decree in the other situations discussed above is to be given great weight just as its prior interpretation was given great weight by this Court in the *Atlantic Refining* decision.

IV.

THE GOVERNMENT IS IMPERMISSIBLY SEEKING TO MODIFY THE SWIFT DECREE WITHOUT THE NECESSARY FORMAL MODIFICATION PROCEEDINGS.

When the 1920 Consent Decree was negotiated, no one contemplated that another corporation might one day acquire control of one of the large and powerful meat companies. The antitrust problems were due to the practices of the meat companies and their then controlling shareholders. They, and they alone, were made the subject of injunctive relief. No provision was included to preclude a corporation from owning stock of a meat packer merely because the corporation was engaged in a business forbidden to a packer, even if it be assumed one could have been. In these circumstances, the Government's claim that Greyhound cannot control Armour so long as it has restaurant subsidiaries is, in effect, an attempt to modify the Decree.

The Courts, however, have consistently refused to modify decrees in proceedings purporting to seek only a construction of those decrees. For example, in *United States* v. *Continental Can Company*, 143 F. Supp. 787 (N. D. Cal., 1956), where the Government moved for an order construing a final judgment, the Court looked to the record relating to the entry of the decree and to the language of the decree itself to determine what the decree encompassed. Pointing out that "[a] judgment is limited in its application to the issues actually presented by the pleadings and intended to be adjudicated at the time of entry" 143 F. Supp. at 789. The Court rejected the proposed interpretation and suggested that, if the Government feared anticompetitive effects from the proposed acquisition it could begin a new

proceeding under Section 7 of the Clayton Act, 15 U. S. C. § 18.*

As Judge Hoffman found in the *General Host* proceeding, the 1920 consent Decree was "obviously the product, in principal part, of extensive negotiation between the defendants and the Government and is a detailed and carefully worded decree" (App. 150). A consent decree such as this inherently embodies a compromise, and thus may well not provide all the relief which the Government would request were the case to go to trial. See *United States* v. *Blue Chip Stamp Company*, 272 F. Supp. 432, 440 (C. D. Cal. 1967), *aff'd sub nom. Thrifty Shoppers Scrip Company* v. *United States*, 389 U. S. 580 (1968). As this Court has recognized, "the circumstances surrounding * * * negotiated agreements are so different that they cannot be persuasively cited in a litigation context."** Relief directed on consent of the parties, where there has been no judicial finding of violation of law, need not be—and typically is not—as extensive as that which might have been ordered after trial.

The Government's argument, in essence, is that this Decree, entered on consent in 1920, should be interpreted to include relief on which it would insist were the Decree

* Accord, *United States* v. *Western Electric Co.*, 409 F. 2d 1377, 1379 (1969), *cert. den. sub nom. Components, Inc.* v. *Western Elec. Co.*, 90 S. Ct. 152 (1969); *United States* v. *American Soc'y of Composers, Authors & Publishers*, 331 F. 2d 117 (2d Cir.), *cert. den.* 377 U. S. 997 (1964); *Standard Oil Co.* v. *Clark*, 163 F. 2d 917, 930-31 (2d Cir. 1947), *cert. den.* 333 U. S. 873 (1948), where the Court reiterated that the specific provisions of a consent decree should be read in light of the decree's general purpose. *Cf. Terminal R. R. Ass'n* v. *United States*, 266 U. S. 17, 29 (1924):

> "In contempt proceedings for its enforcement, [an antitrust] decree will not be expanded by implication or intendment beyond the meaning of its terms when read in the light of the issues and the purpose for which the suit was brought; and the facts found must constitute a plain violation of the decree so read."

** *United States* v. *E. I. du Pont de Nemours & Co.*, 366 U. S. 316, 330 and n. p. 1 (1961).

being negotiated today. However, having agreed to less than all the relief to which it might have been entitled after a trial, the Government cannot now obtain expansion of the Decree beyond its terms. *Ford Motor Company* v. *United States*, 335 U. S. 303, 320, 322 (1948); *United States* v. *International Harvester Company*, 274 U. S. 693, 702-03 (1927); *United States* v. *Radio Corporation of America*, 46 F. Supp. 654 (D. Del. 1942), *appeal dismissed*, 318 U. S. 796 (1943); see *Swift I*, 276 U. S. at 327; *United States* v. *American Society of Composers, Authors & Publishers*, *supra*, 331 F. 2d at 123-24. The Government, as much as a defendant, is bound by the terms of the Consent Decree.

As we have seen, a consent decree, although a judicial act, has contractual aspects. Such a decree is limited to its four corners, and, unless a formal modification proceeding is undertaken, is not subject to expansion or contraction by the Court. *Dart Drug Corporation* v. *Schering Corporation*, 320 F. 2d 745 (D. C. Cir. 1963); *Artvale, Incorporated* v. *Rugby Fabrics Corporation*, 303 F. 2d 283 (2d Cir. 1962); *American Radium Company* v. *Hipp, Didisheim Company*, 279 Fed. 601, 603 (S. D. N. Y. 1921), *aff'd* 279 Fed. 1016 (2d Cir. 1922).

The Government's effort in this case to expand the 1920 Decree to affect the outside business activities of Armour's controlling shareholders is an impermissible attempt to modify the decree *sub silentio*, similar to that rejected by this Court in *Hughes* v. *United States*, 342 U. S. 353 (1952). There, too, the Government asked the Court to construe a consent decree "so as to achieve the purposes of the entire * * * decree,"* the thrust of which, it claimed, was to divorce production-distribution companies from theater exhibition companies. The construction sought by the Government would have required Hughes, who owned stock in both types of company, to sell one type of stock.

* 342 U. S. at 357.

Although recognizing that this single ownership might well impede competition, the Court declined to adopt the Government's interpretation of the decree, for it found "no fair support for reading that requirement into the language of" the decree.* Moreover, the Court refused to order modification of the decree either under the provision reserving power to amend or under the inherent equity powers of the Court, since Hughes had not been heard on the question whether sale of one block of stock was required to effectuate the purposes of the decree. Accord, *Liquid Carbonic Corp.* v. *United States,* 350 U. S. 869 (1955). *reversing* 121 F. Supp. 141, *as modified,* 123 F. Supp. 653 (E. D. N. Y. 1954); *United States* v. *Continental Can Company, supra.*

V.

THIS APPEAL RAISES THE SPECTER OF SUPPOSED CIRCUMVENTION OF ANTI-TRUST DECREES AS A MAKEWEIGHT PUBLIC POLICY PRETEXT FOR ADOPTING UNPRECEDENTED AND ILL-CONCEIVED NEW RULES TO APPLY TO ALL ANTITRUST DECREES.

This appeal poses a classical question: Do the purposes or "ends"—as seen by the Government—justify the use of any means to accomplish such objectives. The Government contends that a stockholder relationship between Greyhound and Armour is "anti-competitive". The Government assumes a trial has occurred in which facts show "a substantial imbalance" between buyers and sellers in an industry in which the sellers extract "substantial concessions" to the disadvantage of "less powerful buyers". The foreclosure between Greyhound and Armour will create "unjustified price concessions and product preference" by a "sister subsidiary" and substantial "threats to competition in the meat industry" are portended.

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* *Ibid.*

Technical studies, national commissions and economic research services are "evidentiary sources" supporting the necessity of creating—now—an "important bulwark of competition in the food industry". Without benefit of a complaint, discovery or trial, Greyhound is found by reference to a food and meat bibliography to have violated basic antitrust laws on competitive relationships (p. 20-24).

Armed with such gross violations and wrongdoing, the appeal proceeds to chastise the District Court for not accepting any "means" immediately available to right this unfortunate preconceived "wrong". The 1920 settlement —the Packers Decree—which carefully excises from its provisions any suggestion that future "stockholders" are bound by its terms and which does not even include "successors and assigns*—is the vehicle or method of summarily disposing of this "anti-competitive" occurrence, to wit: the relationship of Greyhound to Armour.

This record contains no evidence of any anticompetitive effects between Greyhound and Armour. Unsupported assumptions on meat purchases, reciprocity and price structure are not "evidence". They are sprinkled through the appeal to color the case and develop "equity" to support a drastic extension of recognized legal principles.

Behind this anti-trust "facade" is a staggering principle: Every anti-trust injunction entered not only binds the parties to it, but also all "successors and assigns" and any future controlling shareholder. The Justice Department for almost a century has properly imposed restrictions, after trial, or through settlement, to maintain workable competition under the laws that agency is charged with administering. Never—in all these years—so far as we know, has that agency suggested that these terms be included in any anti-trust decree. It is not "all struc-

* Excepting paragraph "Third" (App. 24), not involved in this proceeding.

tural anti-trust decrees" which are at issue in this proceeding but, rather, simple principles of equity and the basic legal doctrine on which all agencies, public and private, have relied and operated on for many years.

Every anti-trust decree, the Governments appeal contends, applies to other properties of investing shareholders and operates against the world with an undisclosed and heretofore unknown ominous provision: persons who act contrary to a "purpose" of a decree are bound by the decree and violate it although they have done nothing the decree forbids or abetted a violation. It is not necessary under the Government's view, to meet the requirements of Rule 65(d).

If the Government's position is sound it will no longer be necessary to modify decrees. The time the Court spent in processing petitions such as *U. S.* v. *United Shoe,* 391 U. S. 244, was unnecessary. If the purpose of a decree as envisioned by the Government requires certain language or certain results, then the private sector of the country must operate with that principle in mind and realize that one who acts inconsistently with the underlying "purpose" of a decree is bound by its terms and foreclosed from such conduct.

The *United Shoe* case is an interesting analogy. In this case, the Government observes that Greyhound's action is contrary to the "competitive structure" and original purposes of a decree. In *United Shoe* this Court observed that the shoe decree was "specifically designed to achieve the establishment of workable competition by various means * * *."

The Government's objective—to believe the brief—has been thwarted in this case. In *United Shoe* the Government contended "that the decree has failed to accomplish this result." (Workable competition.) In this case, the decree

is simply to be interpreted—irrespective of its provisions to cure a claimed defect and restore a claimed situation as originally conceived by the Government in 1920. In *United Shoe,* the Justice Department—relying on more established principles—sought a new "trial" in which the decree would be modified to include new provisions if the trial were successful. But in this proceeding the Government seeks a *"caveat emptor"* rule that places all stockholders on notice: A controlling stockholder is bound by the terms of any anti-trust decree entered against the company in which he is investing.

The justification for this dramatic change in the law is founded on the example which Greyhound has supposedly set to "circumvent" all anti-trust decrees. Thus, the brief pretends the *Schlitz Brewing* case (253 F. Supp. 129), as an illustration, will be thwarted, since Schlitz is under an injunction not to acquire any California brewer. No other company is under such an order. LTV is not. Other conglomerates are not. If a conglomerate—ITT, LTV, etc.—with a brewery in California acquired Schlitz, the decree does not prohibit that transaction—but good sense does. Director fiduciaries are accountable to their shareholders, and to the FTC and the Department of Justice, in their administering of the anti-trust laws. Wholly apart from this proceeding, a conglomerate with a California brewery is "restrained" from acquiring Schlitz because the acquisition would undoubtedly be nullified under Section 7 of the Clayton Act since a court has already determined that the brewery industry is too concentrated in California. The addition of the entire Schlitz system to whatever property the "stockholder" owns in California would probably constitute a per se violation of section 7 and the Sherman Act as well.

To win this appeal and to support an unprecedented change in equitable rules applying to injunctions requires

a major public policy consideration so that traditional law can be abandoned for this "noble" objective. The noble objective is make-believe. Greyhound's action does not serve as an example for anyone to acquire Schlitz whether or not such acquiring company owns a brewery in a prohibited area—California.

Moreover, the action of Greyhound is not unique but merely conforms with the Government's own "circumvention rule" adopted in the *LTV* case in Pittsburgh. The Government, in chastising Greyhound for establishing a mechanism for circumventing decrees, ignores its own conduct in which an identical arrangement has been approved at its request by a Federal Court.

The *LTV-Wilson* matter is quietly put to one side in the appeal brief by placing it under the convenient legal heading "Government Estoppel".

> "In substance, Greyhound suggests that the Government is estopped * * * because it has not acted against other possible violations." (p. 34)

This neat and tidy disposition of the LTV Government solicitation is unfair. How can the Government accuse Greyhound of devising a universal decree end-around or "circumvention", when the "wrongdoer" has merely the Government's own example. There is no estoppel involved. At issue is the credibility of this public interest justification for burying the limitations of Rule 65(d) under the pretext that Greyhound has "designed" a method of circumventing all anti-trust decrees. The analogy to LTV—a plan and program spawned by the Government and solicited in a Federal Court—is dispositive. Greyhound and LTV are both forms of conglomerates, each of whom has a major transportation system—Braniff-bus lines; each has a computer subdivision; each owns a packer by a stockholder relationship: Wilson and Armour, the packer in each instance, are corporate sub-

sidiaries; each packer is under the decree; and each company, LTV and Greyhound, has through other subsidiaries investments in other corporations that have products included in the decree, assuming it covers restaurant operations.

The structural anti-trust decrees collected in the appendix can be "circumvented" by using the Justice Department's LTV settlement plan, which permits LTV to own a packer and, in another corporate subsidiary, a company manufacturing decree products.* Since the LTV settlement was filed in Pittsburgh, there does not appear to be a single instance in which any of the structural anti-trust decrees collected in the appendix have been "circumvented" and the reason is patently clear. No corporation owning a brewery in California is about to acquire Joseph Schlitz Brewing Company—with a principal brewery in California—because it will violate anti-trust law. It has

* Moreover it is appropriate to point out that, out of the fourteen reported representative decrees which the Government urges are in danger of being undermined, (see Brief for U. S. Appendix) six, in effect, prevent a takeover of the antitrust defendant by an acquiring firm engaged in prohibited businesses. The six decrees enjoin the defendants from knowingly permitting any of its officers, directors or employees to serve at the same time as an officer, director or employee of any other enterprise in the prohibited lines. (See Appendix to Greyhound Brief for a full text of relevant provisions.) If the 'Meat Packers' Decree had contained this commonly used provision, Greyhound would never have acquired control of Armour.

The decree in *United States* v. *Loew's Inc.*, 1950-1951 Trade Cases ¶ 62,861 (S. D. N. Y.) (Greyhound Brief, Appendix), not only enjoins interlocking directors and employees but also provides an additional remedy by requiring the defendants to adopt by-laws containing the prohibition. For other examples of these common provisions, see *U. S.* v. *Richfield Oil Corp.*, 1967 Trade Cases ¶ 72,066 (S. D. Cal.) (par. 3). *Western Newspaper Union*, 1960 Trade Cases ¶ 69,192 (W. D. Mo.) (par. IV), and *Linen Supply Institute of Greater New York, Inc.*, 1958 Trade Cases ¶ 69,120 (S. D. N. Y.) (par. VII).

A study of the eight other reported representative decrees cited by the Government indicates that their provisions as to acquisitions were either intended to restrain the acquisitive behavior of the con-

nothing to do with the structural decree "circumvention" suggested to the Pittsburgh court in the *LTV-Wilson* settlement and it logically follows that it has nothing to do with Greyhound-Armour, an identical "circumvention".

Again, the justification or excuse for applying such an unprecedented procedure to Greyhound is the "competitive mischief that would inhere" (p. 23). This argument is reduced to its logical absurdity with the suggestion that the only infirmity to the acquisition of Armour by A & P, or Swift by Kroger, is this unique construction. Such an assertion is frivolous, and ignores all anti-trust activity of the Department of Justice and the decisions of this Court, uniformly avoiding such mergers on a showing of the requisite anticompetitive effects that flow from such vertical combinations. The Government treats American industry as if it operated on day-to-day reference with the Packers' Decree, a document which none of them, save the packers, have probably ever heard of, based as it is on historical competitive anachronisms of our pre-Coolidge economy. The Government brief argues that the suggested "inter-

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senting defendants and were not "structural" decrees except in this limited sense, or they failed to include a supplementary prohibitory clause because it was patently unrealistic to anticipate that the defendant, for example, A. T. & T., would be the subject of a take-over. See, *e.g.*, *United States* v. *Western Electric Co., Inc.*, 1956 Trade Cases ¶ 68,246 (D. N. J.).

There may be a few cases in which a provision having the effect of barring the acquisition of the defendant by a third person in the prohibited lines was omitted by oversight in a decree which actually contemplated full "structural relief," although the Government has not cited any such decrees. If it is true that such decrees "will be seriously undermined," then the Government can prove the undermining by sufficient facts and thus meet the requirements for obtaining a modification. In *United States* v. *United Shoe Corp.*, 391 U. S. 244, this Court held the Government, in seeking a modification of a decree, does not have to meet the tests of *United States* v. *Swift & Co.*, 286 U. S. 106, applicable to a defendant seeking relief from a decree, where the Government's purpose in seeking modification is to make the decree accomplish its intended result.

pretation" is needed, because neither A & P, Safeway, nor Kroger—let alone the packers—has any knowledge of the restraints imposed on them, by the anti-trust decisions of this Court and, but for the appeal brief uncovering a manipulation possible in all anti-trust decrees, transactions as those suggested on p. 27 of the appeal brief would be consummated with all haste.*

Implicit in this collection of potential combinations is the underlying premise on which this appeal is based, to wit, such mergers are contrary to the public interest, in that they represent combinations which restrain trade, or substantially lessen competition. The Greyhound-Armour "relationship" is disposed of by reference. It, too, is "anti-competitive". Such irrelevant comment does not add one iota to the analysis of the language of the Decree, and whether it applies to stockholders. The Government has filed, tried, and argued an anti-trust case, the essence of which is that the Greyhound-Armour merger violates certain anti-competitive principles customarily reserved for anti-trust cases. It is in this context that the same Government, interpreting the same Decree, can accept

* Armour contracted with Morris & Company, an original signatory to the decree (A. 44), to acquire all of its assets. The Secretary of Agriculture later filed a complaint against all the parties, charging that the acquisition violated an antitrust provision of the Packers and Stockyards Act, namely, § 202(e) (7 U. S. C. § 192(e)). On September 14, 1925, the Honorable William M. Jardine, Secretary of Agriculture of the United States, found "that the evidence is insufficient to sustain the charges made in the complaint" and ordered the proceeding dismissed without prejudice. In his opinion the Secretary of Agriculture stated (p. 10): "The overwhelming weight of the testimony is in favor of the view that competition has not been materially lessened by reason thereof [the acquisition], either in buying of livestock or the sale of the meat or meat products thereof." (*Secretary of Agriculture* v. *Armour & Company of Illinois, et al.*, Doc. No. 19.)

It is obvious from the above that the Decree was never considered a panacea to forbid all anticompetitive actions that might thereafter occur in the meat packing industry. The Packers Decree is not even mentioned in the Secretary's opinion above referred to.

some "circumventions", and not others. The *LTV-Wilson* analysis and the Greyhound-Armour evaluation differ only because the Government senses more anti-competitive effects in one, compared to the other. The Government, in its brief filed last May, suggested that the *LTV* analogy was irrelevant, because:

> "A proposal of settlement surely does not make law, especially in light of the serious anti-competitive factors involved in the underlying case; moreover, the prohibition under the meat packers decree to which Greyhound points comes under the heading of 'miscellaneous articles' (A. 33) and does not involve the food prohibitions that are central to the decree."

The disguise of protecting the integrity of a decree is thus removed. The decree pointedly prohibits packers from processing or selling steel products and certain food items. LTV owns a packer and a steel processor. Greyhound owns a packer and another company that is in the food service business. Each company has precisely the same "relationship". One violates the Decree, one does not. The omniscience of the Justice Department distinguishes between these two situations, based upon how anti-competitive the Justice Department thinks the situation is.

The lesson of the LTV settlement is not in creating a "Government estoppel" but rather in defining the principles which will be adopted if the Government's position is accepted.

First, Rule 65(d) is amended. Anti-trust injunctions apply to future controlling, investing stockholders and all successors in interest with, or without, appropriate language in the decree.

Second, this amendment to Rule 65(d) applies in some circumstances and not in others, depending upon an examination of the Government's purpose in entering into

the decree. That analysis is unilateral, made privately by the Government, without reference to any other purposes.

Third, the amendment to Rule 65(d), assuming an appropriate purpose is determined by the Government, applies if it discerns anti-competitive effects will flow from control by certain stockholders.

Greyhound respectfully requests this Court to affirm the well-reasoned judgment of the District Court. Judge Hoffman pointedly observed that the Government is "not seeking to enjoin Greyhound from committing any violation of the anti-trust laws * * * Nor is the Government seeking to prevent a violation of the 1920 Consent Decree by Armour." The Court appropriately quoted from Rule 65(d) and properly concluded: "This rule states what has long been accepted, that an injunction binds only those who are parties to the action." Judge Hoffman conceded that non-parties can "aid and abet" a party in violating the injunction but concluded: "The Government has not charged that Greyhound has or threatens to cause or assist Armour, or any of the original defendants, in dealing in any of the lines of commerce prohibited to them by the decree."

The decree—no decree—binds future investing stockholders. The law has been settled that decrees do not run against the world. Moreover, they do not apply to successors and assigns unless, by the terms of the decree, such a provision is included. The excuse for a wholesale amendment to Rule 65(d) is non-existent and requires the gross assumption that certain corporations, but for this case, will flagrantly violate certain antitrust decrees. The LTV analogy is controlling and shows that the Government's primary objective is not preserving the sanctity of the decree or curtailing make-believe circumvention routes since LTV is a classic example of what Greyhound supposedly invented. Moreover, the LTV settlement is an interpretation of the language of the decree by one of the parties—the Government—and is useful for construction of the language.

VI.

IF THIS COURT SHOULD DETERMINE THAT THE DISTRICT COURT ERRED IN DISMISSING THE GOVERNMENT'S PETITION AND REMANDS, THEN IT SHOULD STATE THE ISSUES STILL OPEN IN THE DISTRICT COURT AND LAY DOWN GUIDELINES FOR THEIR DETERMINATION.

If there is to be a remand this Court should lay down guidelines for issues still open for determination in the District Court. The Government concedes that "A non-party such as Greyhound is of course entitled to a hearing in the district court before such a supplemental order is issued against it." And Mr. Justice Douglas, dissenting in the *General Host* appeal (398 U. S. 268), said that on a remand there should be a "full hearing on the issue of interference."

Necessarily, this must mean the mere fact of Greyhound's control of Armour, which does not require a "hearing" to establish, while it simultaneously controls restaurant subsidiaries, does not *per se* prove "interference" or "obstruction" of the purposes of the 1920 Decree.

The objective of Congress in enacting the Sherman Act was to insure a competitive business economy. *United States* v. *South-Eastern Underwriters Ass'n*, 322 U. S. 533, 559 (1944). The 1920 Consent Decree was entered in furtherance of this objective. We suggest, therefore, that any issue of Greyhound's "interference" with the "purposes" of the 1920 Decree against Armour, because of Greyhound's simultaneous ownership of restaurant subsidiaries, should be resolved in the light of 1971, not 1920, conditions in the food industry, and the District Court should be free to determine whether that simultaneous ownership now promotes, rather than impairs, competition in the food industry.

The Government concedes that Greyhound could "adduce any special reasons why the situation in question should be allowed, notwithstanding the prohibition of the existing decree; such a showing would ordinarily be like the showing that Armour itself as a Greyhound subsidiary would make if it sought modification of the decree" (p. 34).

Stringent tests for modification as against the consenting parties were laid down by this Court in 286 U. S. 106, and Judge Hoffman in 189 F. Supp. 885, 892 (N. D. Ill.), aff'd 367 U. S. 909, despite the lapse of 40 years and fundamental changes in the food industry. We respectfully submit, however, that Greyhound, a non-consenter, should not be required to make the same showing in order to obtain modification as those who consented so as to avoid possible criminal prosecution, the *prima facie* effect that an adverse litigated decree would have had in treble damage actions, or for any other reasons. The element of the Packers' consents was strongly stressed by Mr. Justice Cardozo, when, in denying modification, he stated for this Court that, "Nothing less than a clear showing of grievous wrong evoked by new and unforeseen conditions should lead us to change what was decreed after years of litigation *with the consent of all concerned.*" 286 U. S. at 119 (Italics added.) The Decree enjoined the consenting parties from engaging in many lawful businesses. The packers, in particular, were enjoined from dealing in groceries and selling meats at retail. Why should one, who more than fifty years later, acquires control of a packer, and which also desires to engage in lawful businesses which are supposedly forbidden to the Packers, be required to make the same showing as a Packer before modification will be granted? The policy considerations that require a very strong showing to be made before a Court will modify a decree at the behest of a party who consented, or who

litigated and lost, have no application to one who merely acquires control of that party half a century later.

The Government also states that, "it is open to Greyhound to seek to show that it is not in the forbidden food lines" (Br. 33). No controversy exists over the fact that Greyhound does presently own two subsidiaries engaged in the restaurant business. Hence, this sentence can only mean that it is still open to Greyhound to prove, by whatever relevant evidence that still may be available, that it was not the intention of the Decree to enjoin the Packers from engaging in the restaurant business. The Court should make this clear.

Finally, if "interference" is found, then a hearing should be held to fashion a remedy which balances any claimed injury to the public interest by Greyhound's ownership of Armour against the economic harm to Greyhound and its shareholders that would result from divestiture of Armour. Greyhound now has an investment in Armour worth approximately $450,000,000. Divestiture of Armour would result in severe economic losses to Greyhound. If the vice of Greyhound's ownership of Armour lies in the fact that it also owns restaurant subsidiaries, that vice can be completely eradicated with much less harm to Greyhound by giving it the right to elect to divest itself of these subsidiaries. We take it that that is what the Government has in mind when it states that the District Court should determine for itself whether "to allow Greyhound to divest itself of its food subsidiaries other than Armour, in which event the government would not object to the retention of Armour" (p. 34).

CONCLUSION.

Greyhound respectfully prays that the judgment of the District Court be affirmed.

Respectfully submitted,

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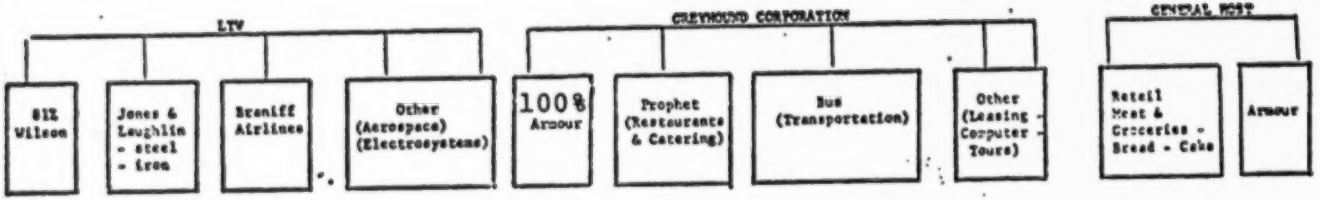

Total Sales	$3,750,000,000	Total Sales	$2,823,000,000	Total Sales	$2,353,000,000
Packer (Wilson)	1,286,000,000	Packer (Armour)	2,153,000,000	Packer (Armour)	2,153,000,000
Other Businesses	2,464,000,000	Other Businesses	670,000,000	Other Companies	200,000,000
Decree Products (Iron and steel)	1,056,000,000	Decree Products (Restaurants)	124,000,000	Decree Products (Food Stores & Bread - Baking)	203,000,000
% of Decree Products to All Other Businesses Excluding Wilson	43%	% of Decree Products to All Other Businesses Excluding Armour	18%	% of Decree Products To All Other Businesses Excluding Armour	100%

EXHIBIT A.

APPENDIX.

Provisions Enjoining a Corporate Defendant from Permitting its Directors, Officers, and Other Employees to Serve with or Have an Interest in a Business Forbidden to the Corporate Defendant.

U. S. v. *Curtis Circulation Co., Inc.*, 1967 Trade Cases ¶72,279 (D. N. J.):

VI.

[Acquisitions Between Defendants]

* * * * *

(C) Each of the defendants Curtis and Select is enjoined and restrained for a period of ten (10) years from knowingly permitting any of its officers, directors, agents or employees to serve, at the same time, as an officer, director, agent or employee of any other national distributor, or of any wholesaler in which any other national distributor has any control or any financial or other interest.

United States v. *General Motors Corp.*, 1965 Trade Cases ¶71,624 (E. D. Mich.):

IV.

[Prohibited Practices]

Defendant is hereby enjoined from:

* * * * *

(B) Thirty days after knowledge thereof, having or allowing to serve as an officer or director of defendant, or as a staff head or bus sales executive or bus sales representative of the GMC Truck & Coach Division any individ-

ual whom it knows to own a material share of the total outstanding stock of any manufacturer of buses or of any person whose principal business is that of bus operator;

(C) Thirty days after knowledge thereof, having or allowing to serve as an officer or director of defendant, or as a staff head or bus sales executive or bus sales representative of the GMC Truck & Coach Division any individual whom it knows to be an officer or director of any manufacturer or buses or any person whose principal business is that of bus operator.

United States v. *America Corporation and Republic Corporation*, 1963 Trade Cases ¶ 70,923 (S. D. Cal.):

IV.

[Practices Prohibited]

Defendant Republic is enjoined and restrained from permitting any of its officers, directors, agents or employees to serve also, at the same time, as an officer, director or agent, or employee of any other person engaged in professional film processing, except its own subsidiaries.

United States v. *Driver-Harris Co.*, 1961 CCH Trade Cases ¶ 70,031 (D. N. J.):

VIII.

[Exchange of Information—Interlocking Interests]

Each consenting defendant is enjoined and restrained from, directly or indirectly:

• • • • •

(B) Permitting any of its officers, directors, agents or employees to serve simultaneously as an officer, director, agent or employee of any other manufacturer not a subsidiary of the defendant;

(C) Except for the purchase and sale of products bought and sold in the normal course of business,

• • • • •

(2) knowingly permitting any of its officers, directors, or managerial or policy-making agents or employees to acquire or hold, directly or indirectly, any of the assets or capital stock of, or any financial interest in, any other defendant or any person which becomes a manufacturer, or to acquire, directly or indirectly, any of the assets or capital stock of, or any financial interest in, any manufacturer.

United States v. *United Fruit Co.*, 1958 Trade Cases ¶68,941 (E. D. La.):

VIII.

[Creation of New Company]

• • • • •

(D) The term "Eligible Person" as used in this Final Judgment shall mean any individual, group or business organization, other than Standard Fruit and Steamship Company, that is not owned or controlled by United and in which United has no stock interest directly or indirectly and that makes a showing that it intends to engage in the importation of bananas into the United States.

• • • • •

IX.

[Interlocking Directorates—Stock Acquisitions]

After United has completed its compliance with Article VIII above,

(1) No member of the board of directors of United, or any officer or employee thereof shall hold any office or

have any employment or contractural relation with the New Company or Eligible Person, directly or indirectly.

United States v. *Loew's Inc.*, 1950-1951 Trade Cases ¶ 62,861 (S. D. N. Y.):

VI.

[Reorganization]

• • • • •

The by-laws of National Theatres Corporation or of the New Theatre Company shall provide that a person affiliated with any other motion picture theatre circuit cannot be elected an officer or a director unless he has been approved by the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, and the Court, and that in no event can officer or a director be affiliated with any motion picture theatre circuit (other than the Twentieth Century-Fox defendants) which has been a defendant in an antitrust suit brought by the Government, relating to the production, distribution, or exhibition of motion pictures. The by-laws of Twentieth Century-Fox Film Corporation or of the New Production Company shall provide that a person who is a director, officer, agent, employee, or substantial stockholder of another motion picture distribution company cannot be elected an officer or a director.

• • • • •